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JUL 6 - 2005

Rob McKenna

Public Disclosure Commission

## ATTORNEY GENERAL OF WASHINGTON

1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

July 6, 2005

Vicki Rippie  
Executive Director  
Public Disclosure Commission  
P. O. Box 40908  
Olympia, WA 98504-0908

RE: Richard Pope 45 Day Letter – Keep Washington Rolling

Dear Ms. Rippie:

The Attorney General's Office has received a complaint from Mr. Richard Pope against the Keep Washington Rolling committee. The complaint alleges violations of the Public Disclosure Law, Chap. 42.17 RCW, and was filed pursuant to RCW 42.17.400(4). As you know, RCW 42.17.400(4) requires action on the complaint within 45 days of its receipt. In this case, the complaint was received in our mailroom on July 1, 2005.

As is customary with these types of complaints, we are referring the complaint to your agency for investigation. We will await the results of your investigation and possible action before proceeding further. Please note that Mr. Pope has indicated that in the event action is not brought within 45 days, he will bring a citizen's action under RCW 42.17.400.

I have been assigned the file in our office. I am available to answer any legal questions you may have during the course of your investigation.

If you have any questions, please do not hesitate to call me at 753-0543.

Sincerely,

LINDA A. DALTON  
Sr. Assistant Attorney General

LAD:eg

cc: Richard Pope  
Rob McKenna, Attorney General  
Jeff Goltz, Deputy Attorney General



Richard L. Pope, Jr.  
1839 – 151<sup>st</sup> Avenue, S.E.  
Bellevue, Washington 98007

Tel: (425) 747-4463  
E-Mail: [RPope98155@aol.com](mailto:RPope98155@aol.com)

July 1, 2005

**VIA FAX TO 360-664-0228 AND CERTIFIED MAIL**

Honorable Robert M. McKenna  
Attorney General of Washington  
1125 Washington Street, S.E.  
Post Office Box 40100  
Olympia, Washington 98504

**TOTAL PAGES: 18**

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Re: Citizen Action Letter, RCW 42.17.400(4)  
Keep Washington Rolling  
Puget Sound Regional Council  
Port of Seattle  
Port of Everett  
Port of Tacoma

**Public Disclosure Commission**

Dear Attorney General McKenna:

I am sending this written notification pursuant to the citizen action provisions of RCW 42.17.400(4) to inform you that I have reason to believe that Keep Washington Rolling, Puget Sound Regional Council, Port of Seattle, Port of Everett, and Port of Tacoma may have violated RCW 42.17.130, relative to use of public agency facilities in campaigns. In the alternative, Keep Washington Rolling may be falsely representing in its political advertising that Puget Sound Regional Council, Port of Seattle, Port of Everett, and Port of Tacoma are members and supporters of its political committee.

Keep Washington Rolling is a political committee that was originally formed on or about June 1, 2005 under the name "Citizens for Better Transportation" for the purpose of opposing Initiative 912 (a measure which would repeal the 9.5 cent increase in the motor vehicle fuel tax approved this year under ESB 6103). On June 14, 2005, the organization changed its name to Keep Washington Rolling. According to the C1PC's filed with the Public Disclosure Commission, the only listed officers of this political committee are Charles Knutson (media contact) and Phillip Lloyd (treasurer). Each of the C1PC's states that the listing of other officers is TDB (to be determined).

Keep Washington Rolling maintains a campaign website at the web address of [www.keepwashingtonrolling.com](http://www.keepwashingtonrolling.com). Keep Washington Rolling maintains a listing of some of the members of its political committee at [www.keepwashingtonrolling.com/who.html](http://www.keepwashingtonrolling.com/who.html).

Among the "Organizations" supposedly belonging to Keep Washington Rolling are at least four Washington public agencies: three port districts established under Title 53 RCW – Port of Seattle, Port of Everett and Port of Tacoma, and one interlocal agency established under Chapter 39.34 RCW – Puget Sound Regional Council.

Membership of these four public agencies in a political committee supporting or opposing a ballot proposition would seem to be a clear violation of RCW 42.17.130:

**RCW 42.17.130 Forbids use of public office or agency facilities in campaigns.**

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No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting Public Disclosure Commission campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency: PROVIDED, That the foregoing provisions of this section shall not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;

(3) Activities which are part of the normal and regular conduct of the office or agency.

At most, RCW 42.17.130(1) would allow these four public agencies to take an up or down vote on whether to support or oppose I-912 at an open public meeting. The meeting agenda would have to conspicuously include notice that the agency was going to vote on support or opposition to the ballot measure, as well as opportunity for public comment on the matter at the meeting. Nothing in RCW 42.17.130 would authorize any public agency to become a member or public endorser of any political committee.

Needless to say, it was very alarming to me to view the Keep Washington Rolling website and see public agencies listed as alleged members of this political committee. I immediately recognized the three port districts as being public agencies, and sent off e-mails to each of them, pointing out that Keep Washington Rolling had their agencies listed as members of that organization, and that I believe this to be in violation of state law. My e-mails also included a public records request for "the minutes and agendas from any meeting of the (relevant public agency) at any time during the 2005 calendar year in which either: (1) Initiative 912 was addressed or discussed in any way or (2) Keep Washington Rolling was addressed or discussed in any way."

I received responses from the Port of Everett and Port of Seattle within just a few hours of sending my e-mails. The Port of Everett's response, given by Deputy Executive Director Ed Paskovskis, unequivocally denied involvement in Keep Washington Rolling:

Thanks for bringing this matter to our attention. The Port Commission has not taken a position on Initiative 912, nor was the "Keep Washington Rolling" organization authorized to list the Port of Everett as a member. Furthermore, the topic has not been on any Commission agendas, recorded minutes or addressed or discussed in any way.

E-Mail from Paskovskis (Port of Everett) to Pope, June 30, 2005



The response from the Port of Seattle, given by Public Records Specialist Vanessa Ressler, was somewhat more nuanced. It stated that neither topic (Keep Washington Rolling or I-912) was ever discussed by the commissioners in any public meeting during 2005, but did not unequivocally deny any involvement with the political committee:

The Commission Meeting Minutes have been searched and neither of these topics was discussed in any of the open public sessions. In addition your e-mail has been forwarded to the Legal Department for additional review of your questions.

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E-Mail from Ressler (Port of Seattle) to Pope, June 30, 2005

Public Disclosure Commission

I have not yet received any response from the Port of Tacoma. However, under state law, a public agency does have five business days to respond to records requests.

After examining the list of alleged members of Keep Washington Rolling again last evening, I also noticed that the first organization listed, Puget Sound Regional Council, was also a public agency. So I sent a similar e-mail to that agency yesterday evening, which they obviously have not yet had sufficient time to make any response to.

I was able to locate the meeting agendas of the two most recent meetings of the Puget Sound Regional Council Executive Board on their website – namely for May 26, 2005 and June 23, 2005. These would have been the only open public meetings that have apparently been held since the Initiative 912 proposal was first filed with the Secretary of State on May 12, 2005 or Keep Washington Rolling was formed on or about June 1, 2005. Needless to say, neither of these topics appears anywhere on either agenda.

It would appear highly possible that Keep Washington Rolling is misrepresenting in its website advertising that the Puget Sound Regional Council, Port of Seattle, Port of Everett, and Port of Tacoma are members of its political committee, when this does not appear to be very likely, and these public agencies have neither taken any action to join Keep Washington Rolling or even to express any formal position on Initiative 912 at all.

On the other hand, if any of these public agencies has taken any action to join the Keep Washington Rolling political committee or otherwise given this political committee any assistance in its battle over Initiative 912 (except for the general ability to take either an up-or-down vote on supporting or opposing this ballot measure at an open public meeting with notice given on its agenda), this would be a clear violation of RCW 42.17.130 by using the facilities of a public agency to support a ballot measure.

This would be a violation of RCW 42.17.130 even in the event that such support of Initiative 912 and/or Keep Washington Rolling was not formally authorized by a vote of the governing bodies of these public agencies at an open public meeting. It would be just as much a violation of RCW 42.17.130 if members of the governing board of a public agency authorized such support of a ballot measure or membership in a political committee informally without holding a public meeting, or if officers or employees of such public agency purportedly authorized such support or membership, even though they lacked proper authorization from the governing board to take such action.

I realize it is unusual to file a "citizen action letter" under RCW 42.17.400(4), when normally people simply file a complaint with the Public Disclosure Commission. But this is a very important ballot measure, involving the largest tax increase in our state's history, as well as other unprecedented actions under Chapter 42.17 RCW.

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Honorable Robert M. McKenna -- Page 4

July 1, 2005

For example, <sup>Public Disclosure Commission</sup> on June 22, 2005, San Juan County Prosecuting Attorney Randall Gaylord filed a lawsuit against NoNewGasTax.Com, the political committee supporting Initiative 912, in Thurston County Superior Court No. 05-2-01205-3. This apparently was the first time that any county prosecuting attorney had ever filed a lawsuit under RCW 42.17.400(1) to enforce any of the provisions of Chapter 42.17 RCW relating to political campaigns. In addition, this was apparently the first time that any lawsuit had been brought for enforcement of such provisions without the matter previously having been referred to the Public Disclosure Commission for complaint and investigation.

The lawsuit filed by Mr. Gaylord apparently involved relatively minor errors in reporting of otherwise legal contributions by members of the public made over the internet to NoNewGasTax.Com. Apparently, there was some difficulty in being able to get accurate information to fully report some of these contributions to the PDC. And Mr. Gaylord also came up with the novel theory that discussion of Initiative 912 on radio talk shows somehow involved a reportable in-kind contribution to the initiative campaign, even though Chapter 42.17 RCW expressly exempts media organizations in this regard.

I believe that the possibility (and definitely the open allegation publicly made by Keep Washington Rolling) that important public agencies, such as Puget Sound Regional Council, Port of Seattle, Port of Everett, and Port of Tacoma, have joined this political committee or are otherwise using their facilities to support Initiative 912 in violation of RCW 42.17.130, is much more serious than the minor technical violations that Mr. Gaylord has complained about in his recent and unprecedented civil lawsuit.

Likewise, if Keep Washington Rolling is falsely representing that Puget Sound Regional Council, Port of Seattle, Port of Everett, and Port of Tacoma are members of its political committee, when they are not, and implying that these public agencies have formally taken a position on Initiative 912, when they have apparently not done so, this would also be an extremely serious matter at least meriting formal attention and action.

Between them, Puget Sound Regional Council, Port of Seattle, Port of Everett, and Port of Tacoma represent the entire geographical areas of King, Snohomish, Pierce and Kitsap Counties. The first three counties are the three most heavily populated counties in the State of Washington. Between them, these four counties contain more than half of both the population and the registered voters in the State of Washington.

Improper membership by important public agencies in a political committee and/or improper use of the facilities of these agencies to support or oppose a ballot measure, especially one involving the largest tax increase in state history, would be an extremely serious matter. So would improper representations by Keep Washington Rolling that these public agencies are members of its political committee or support its position.

I would point out that your office has not hesitated to take civil enforcement action under RCW 42.17.400(1) when important matters regarding misrepresentation related to initiative campaigns have been presented. For example, your office filed suit against veteran initiative promoter Tim Eyman and other related parties in Snohomish County Superior Court No. 02-2-08212-1. Mr. Eyman had publicly represented that he was not being compensated for his work in promoting his various initiative measures, when this evidently was not the case and he was receiving considerable amounts of compensation. This misrepresentation was a matter of extreme public concern, and I believe a citizen action letter may have been filed with your office as well. In any event, the Public Disclosure Commission referred the matter to your office. Your predecessor initiated the lawsuit, and tens of thousands of dollars in various penalties were recovered.



In addition, Mr. Gaylord and Keep Washington Rolling issued a joint press release on June 22, 2005, in which they announced the filing of Mr. Gaylord's lawsuit against NoNewGasTax.Com in Thurston County Superior Court. Mr. Gaylord and Keep Washington Rolling were adamant in their press release, not only about the technical violations related to the reporting of campaign contribution, but also in their claims that NoNewGasTax.Com was "purposefully misrepresenting" material facts in their public advertising and material in order to gain public support for their position on the initiative.

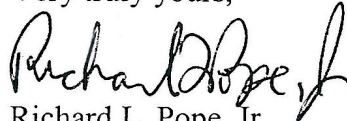
Obviously, if Keep Washington Rolling believes that their opposing political committee should be sued for allegedly "purposefully misrepresenting" material facts in their public advertising and material, then it is appropriate that stringent enforcement measures be taken against Keep Washington Rolling if that political committee appears to be "purposefully misrepresenting" material facts in its own public advertising and material in order to gain public support for its own position regarding Initiative 912.

If enforcement action is not commenced by filing a civil action in court in the name of the State of Washington, within forty-five days of your receipt of this written notification, I reserve my right under RCW 42.17.400(4) to give a second written notification that I will commence citizen's action in the name of the State of Washington over these matters if there has been further failure to so act within ten days of the receipt of such second written notification, and thereafter commence a civil action on my own initiative in the name of the State of Washington over these matters.

I am also forwarding a copy of this citizen action letter to the prosecuting attorneys of King, Snohomish, Pierce and Kitsap Counties. These four counties involve the territory served by Puget Sound Regional Council, Port of Seattle, Port of Everett, and Port of Tacoma. In addition, Keep Washington Rolling appears headquartered in King County. I am sending a copy to the Thurston County Prosecuting Attorney, since that is where the state capitol is located. Finally, I am sending a copy to the San Juan County Prosecuting Attorney, since he has seen fit to sue NoNewGasTax.Com over matters related to this initiative. Perhaps the prosecuting attorney of this small (but important) county is fair-minded and wants to make sure PDC laws are enforced even-handedly.

Thank you for your careful attention in this matter.

Very truly yours,

  
Richard L. Pope, Jr.

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Enclosures:

1. Keep Washington Rolling PDC Filings of C1PC, 06/14/2005 and 06/01/2005
2. Keep Washington Rolling list of alleged members from its website, 06/30/2005
3. Port of Everett Response to Pope Public Records Request, 06/30/2005
4. Port of Seattle Response to Pope Public Records Request, 06/30/2005
5. Pope Public Records Request to Port of Tacoma, 06/30/2005
6. Pope Public Records Request to Puget Sound Regional Council, 06/30/2005
7. Keep Washington Rolling and Randall Gaylord Press Release, 06/22/2005

**DECLARATION**

I declare under penalty of perjury under the laws of the State of Washington that the above and foregoing is true and correct to the best of my knowledge and belief.

Signed at Bellevue, Washington on July 1, 2005.

  
RICHARD L. POPE, JR.

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Public Disclosure Commission

Cc: Vicki Rippie  
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